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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,725	11/13/2003	Lane Thomas Holloway	AUS920030181US1	2699
39698	7590	08/28/2006	EXAMINER	
DUKE W. YEE YEE & ASSOCIATES, P.C. P.O. BOX 802333 DALLAS, TX 75380			SAVLA, ARPAN P	
			ART UNIT	PAPER NUMBER
			2185	

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/713,725	<b>Applicant(s)</b> HOLLOWAY ET AL.
	<b>Examiner</b> Arpan P. Savla	<b>Art Unit</b> 2185

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13.  Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

With respect to Applicant's arguments on pages 4-8 (i.e. sections I and II) of the communication filed August 11, 2006, these arguments have been addressed previously in the Office action dated June 16, 2006.

Applicant argues in the last full paragraph of page 8 of the communication filed August 11, 2006 that "When the Examiner states that Applicants' claims do not specify a particular time when a comparison is made, the Examiner is attempting to read a limitation in Applicants' claim language that does not, and need not, exist. The Examiner is attempting to read an event that must occur that then sets a time at which a comparison is made." The Examiner respectfully disagrees. Even though Applicant's claim limitation allegedly disclose a single event of copying the first instruction of the first plurality into the second cache when the first associated counter reaches a threshold, this single event involves multiple steps. Two distinct steps involved in this single event are comparing the counter value to the threshold value to make sure the counter has in fact reached the threshold after the most recent incrementation and copying the first instructions into the second cache. As such it follows that Applicant's claims do implicitly entail a multiple step event.

Applicant argues in the first full paragraph of page 9 of the communication filed August 11, 2006 that "Mendelson does not teach an instruction being copied when its counter reaches a threshold. In fact, Mendelson teaches away from Applicants' claims because Mendelson quite clearly describes a counter exceeding a threshold before it is copied." The Examiner respectfully disagrees. For the sake of additional clarity the Examiner would like to describe a specific case of the Mendelson reference. This specific case is when the number of accesses in the usage counter is equal to the threshold number "J" at the same time an eviction signal is sent by the new traces to evict the old traces from the filter trace cache (FTC). In this specific case, the traces are moved to the main trace cache (MTC) when the usage counter reaches the threshold number "J." Thus, when taking the broadest reasonable interpretation of Applicant's claims, the specific case of Mendelson described above sufficiently teaches an instruction being copied when its counter reaches a threshold.

Thus, Applicant's arguments have been fully considered but are not persuasive.



8/22/06



SANJIV SHAH  
PRIMARY EXAMINER